

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF MORTGAGE LENDING

Before the Commissioner of the Division of Mortgage Lending

In the Matter of:

EZ DEBT SOLUTIONS, LLC

Covered Service Provider License No. UNL,

and

JOSE AVILA

Covered Service Provider License No. UNL,
Respondents.

Order No. 2012-18

ORDER TO CEASE AND DESIST VIOLATING NRS 645F.010 *et seq.*,
ORDER TO MAKE RESTITUTION,
ORDER IMPOSING AN ADMINISTRATIVE FINE AND ADMINISTRATIVE COSTS,
AND
NOTICE OF OPPORTUNITY FOR HEARING

Issued and Entered,
This 21st day of August, 2012,
By James Westrin,
Commissioner

I.
ORDER TO CEASE AND DESIST VIOLATING NRS 645F.010 *et seq.*,
ORDER TO MAKE RESTITUTION,
and
ORDER IMPOSING AN ADMINISTRATIVE FINE AND INVESTIGATIVE COSTS

The Commissioner of the State of Nevada, Department of Business and Industry, Division of Mortgage Lending (the "Commissioner") having been statutorily charged with the responsibility and authority to administer and enforce Chapter 645F of the Nevada Revised Statutes, NRS 645F.010 *et seq.*, and Chapter 645F of the Nevada Administrative Code, NAC 645F.005 *et seq.*, governing the licensing and conduct of covered service providers in the State of Nevada; and,

1 The Commissioner having been vested with general supervisory power and control over all
2 covered service providers doing business in the State of Nevada pursuant to NRS 645F; and,

3 The Commissioner having been further vested with broad authority to conduct investigations to
4 determine whether any person has violated any provision of NRS 645F or the Regulation; and,

5 The Division of Mortgage Lending (the "Division") having received a complaint against EZ
6 DEBT SOLUTIONS, LLC ("EZ") and JOSE AVILA ("AVILA") (collectively, the "RESPONDENTS")
7 alleging that RESPONDENTS were engaged in activities requiring licensure as a covered service
8 provider pursuant to the provisions of NRS 645F.010 *et seq.* or practices that violate NRS 645F; and,

9 The Division staff having thereafter commenced an investigation of RESPONDENT pursuant to
10 NAC 645F.440 and during such investigation determined RESPONDENTS' were engaged in activity
11 requiring licensure as a covered service provider pursuant to provisions of NRS 645F.010 *et seq.* and
12 NAC 645F.050 *et seq.*; and,

13 The Division Staff having reported the results of its investigation to the Commissioner; and,

14 The Commissioner having reviewed the results of the investigation made the following
15 FINDINGS OF FACT and CONCLUSIONS OF LAW from such investigation:

16 **Findings of Fact**

17 1. NAC 645F.200 provides as follows:

18 A person shall not advertise services as, provide any of the services of, act
19 as or conduct business as a covered service provider, foreclosure
20 consultant or loan modification consultant or otherwise engage in, carry
21 on or hold himself out as engaging in or carrying on the activities of a
22 covered service provider, foreclosure consultant or loan modification
23 consultant unless the person has a license as a covered service provider,
24 foreclosure consultant or loan modification consultant, as applicable,
25 issued pursuant to this chapter and chapter 645F of NRS.

26 2. Pursuant to NRS 645F.310, "Covered Service" is defined to include, without limitation, all of
27 the following:
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1. Financial counseling, including, without limitation, debt counseling and budget counseling.
2. Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a mortgage or other lien on a residence in foreclosure.
3. Contacting a creditor on behalf of a homeowner.
4. Arranging or attempting to arrange for an extension of the period within which a homeowner may cure a default and reinstate an obligation pursuant to a note, mortgage or deed of trust.
5. Arranging or attempting to arrange for any delay or postponement of the time of a foreclosure sale of a residence in foreclosure.
6. Advising a homeowner regarding the filing of any document or assisting in any manner in the preparation of any document for filing with a bankruptcy court.
7. Giving any advice, explanation or instruction to a homeowner which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a mortgage or other lien on a residence, the full satisfaction of the obligation, or the postponement or avoidance of a foreclosure sale.
8. Arranging or conducting, or attempting to arrange or conduct, for a homeowner any forensic loan audit or review or other audit or review of loan documents.
9. Arranging or attempting to arrange for a homeowner the purchase by a third party of the homeowner's mortgage loan.
10. Arranging or attempting to arrange for a homeowner a reduction of the principal of the homeowner's mortgage loan when such a mortgage loan is held by or serviced by a third party.
11. Providing the services of a loan modification consultant.

12. Providing the services of a foreclosure consultant.

3. On February 4, 2011, the Division received a complaint from ER aka VC ("Complainant VC") against RESPONDENTS and the Division immediately commenced an investigation into RESPONDENTS' business practices. During the course of the investigation the Division determined the RESPONDENTS have been actively engaged in activity required licensure as an independent and associated covered service providers, respectively, under NRS 645F. A review of the Division's records reveals that RESPONDENTS are not currently and have never been licensed by the Commissioner as in independent or associated covered service provider, pursuant to the provision of NRS 645F. The investigation specifically revealed the following:

a. RESPONDENTS were operating a covered service business out of an office location at 2030 E. Flamingo Road, Suite 115, Las Vegas, Nevada 89119.

b. On or about February 10, 2012, Complainant VC engaged RESPONDENTS to perform covered service activity on his behalf for the purposes of obtaining mortgage relief services. Thereafter, Complainant VC made three payments in the amount of \$1,000.00 each to RESPONDENTS. The first payment was made on February 10, 2010, the second payment was made on March 31, 2010, and the final payment was made on July 16, 2010. The total amount of payments made by Complainant VC to RESPONDENTS was \$3,000.00.

c. RESPONDENTS through their attorney, Michael Harker, represented that, while RESPONDENTS did not hold the requisite license under NRS 645F to offer or provide covered service activities, they admit that they did in fact engage in activity requiring licensure under NRS 645F and assert that they did provide assistance to Complainant VC to obtain a loan modification and provided representation to Complainant VC in Complainant VC's preparation for an AB149 Mediation.

4. NAC 645F.850 vests in the Commissioner the authority to order a person engaging in activity in violation of NRS 645F or the Regulation to immediately cease and desist from engaging in the activity.

5. NAC 645.835(2) vests in the Commissioner the authority to order a person who engages in an activity for which licensure is required under NRS 645F to pay restitution to any person who has suffered an economic loss as a result of a violation of the provisions of the chapter.

1 6. NRS 645F.410(1) grants the Commissioner the authority to impose an administrative penalty of
2 not more than \$25,000 on any person licensed or required to be licensed pursuant to provisions of NRS
3 645F who violates any provisions of this chapter or any regulation adopted pursuant thereto or any other
4 applicable law.

5 **Conclusions of Law**

6 7. It is a violation of NAC 645F.200 for a person to advertise, engage in, or otherwise carry on or
7 hold oneself out as engaging in or carrying on the activities of a covered service provider without first
8 obtaining a license under provisions of NRS 645F and NAC 645F.

9 8. By entering into an agreement with Complainant VC to provide loan modification or covered
10 services pursuant to NRS 645F and receiving money for the purpose of providing loan modification or
11 covered services RESPONDENTS violated NAC 645F.200.

12 9. In connection with the complaint that the Division investigated, RESPONDENTS received
13 payments totaling \$3,000.00. As a result of RESPONDENTS' unlicensed activity in violation of NAC
14 645F.200, Complainant VC suffered a direct economic loss in the amount of \$3,000.00.

15 10. The Commissioner is authorized pursuant to NAC 645F.850 to order a person engaging in
16 activity in violation of NRS 645F or the Regulation to immediately cease and desist from engaging in
17 any activity that violates any provision of NRS 645F.

18 11. The Commissioner is authorized pursuant to NAC 645.835(2) to order a person who engages in
19 an activity for which licensure is required under NRS 645F to pay restitution to any person who has
20 suffered an economic loss as a result of a violation of the provisions of the NRS 645F.

21 12. The Commissioner is authorized pursuant to NRS 645F.410(1) to impose an administrative
22 penalty of not more than \$25,000 on any person licensed or required to be licensed pursuant to
23 provisions of NRS 645F who violates any provisions of NRS 645F or any regulation adopted pursuant
24 thereto or any other applicable law.

25 **Order**

26 The Commissioner having formed the opinion based upon the foregoing that RESPONDENTS
27 engaged in activity in violations of NRS 645F and NAC 645F, and concluded and determined that
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RESPONDENTS should be ordered to: 1) cease and desist violating NRS 645F; 2) pay restitution; 3) pay an administrative fine; and 4) pay the Division's administrative costs.

NOW, THEREFORE, IT IS ORDERED that RESPONDENTS shall immediately CEASE AND DESIST from advertising, engaging in, or otherwise carrying on or holding themselves out as engaging in or carrying on any activities of a covered service provider requiring licensure under NRS 645F in the State of Nevada.

IT IS FURTHER ORDERED that RESPONDENTS, jointly and severally, shall be and hereby are required to make RESTITUTION to Complainant VC for the sum of Three Thousand Dollars and No Cents (\$3,000.00) no later than 30 days after the effective date of this order. RESPONDENTS shall contact the Division within 21 days of the effective date of this order to make arrangements for the delivery of the required RESTITUTION to Complainant VC.

IT IS FURTHER ORDERED that an ADMINISTRATIVE FINE in the amount of Twenty-Five Thousand Dollars and No Cents (\$25,000.00) shall be and hereby is imposed, jointly and severally, on RESPONDENTS. The ADMINISTRATIVE FINE shall be due and payable on the 30th day following the effective date of this order and shall be tendered to the Division in accordance with the attached wire transfer instructions.

IT IS FURTHER ORDERED that RESPONDENTS shall be and hereby are assessed the Division's ADMINISTRATIVE COSTS in the amount of Seven Hundred Eighty Dollars and No Cents (\$780.00). The ADMINISTRATIVE COSTS shall be due and payable on the 30th day following the effective date of this order and shall be tendered to the Division in accordance with the attached wire transfer instructions.

IT IS FURTHER ORDERED that an administrative hearing shall be scheduled in this matter only if RESPONDENTS timely request an administrative hearing in accordance with the instructions set forth in Section II of this ORDER entitled Notice of Opportunity for an Administrative Hearing. If no administrative hearing is requested within 20 calendar days of the effective date of this ORDER, RESPONDENTS shall be deemed to have waived and relinquished the right to an administrative hearing in this matter and a FINAL ORDER shall be issued.

1 IT IS FURTHER ORDERED that this Order shall be and is effective and enforceable on the
2 date that it is issued and entered, as shown in the caption hereof.

3 IT IS FURTHER ORDERED that this ORDER shall remain effective and enforceable until
4 terminated, modified, set aside, or suspended in writing by the Commissioner.

5 IT IS FURTHER ORDERED that the Commissioner specifically retains jurisdiction over the
6 matters contained herein and has the authority to issue such further order(s) as he shall deem just,
7 necessary, and appropriate to enforce NRS 645F and NAC 645F and protect the public.

8 IT IS SO ORDERED.

9
10 DIVISION OF MORTGAGE LENDING

11
12 By: 
13 JAMES WESTRIN
14 COMMISSIONER
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II.

NOTICE OF OPPORTUNITY FOR AN ADMINISTRATIVE HEARING

NAC 645F.850 provides as follows:

1. If a person engages in an activity in violation of the provisions of this chapter or chapter 645F of NRS or an order of the Commissioner, the Commissioner may issue an order to the person directing the person to cease and desist from engaging in the activity.

2. The order to cease and desist must be in writing and must state that, in the opinion of the Commissioner, the person has engaged in an activity:

(a) For which the person has not received a license as required by this chapter or chapter 645F of NRS; or

(b) In a manner that violates the provisions of this chapter or chapter 645F of NRS or an order of the Commissioner.

3. A person who receives an order to cease and desist pursuant to this section shall not engage in any activity governed by this chapter or chapter 645F of NRS after receiving the order unless the order is suspended or rescinded.

4. Not later than 20 calendar days after receiving an order pursuant to this section, the person who receives the order may file a verified petition with the Commissioner to request a hearing. Upon receipt of the verified petition, the Commissioner may, for good cause shown, suspend the order pending the hearing. The Commissioner will hold the hearing on a date not later than 30 calendar days after the date the petition is filed unless the Commissioner and the person agree to another date. The order to cease and desist is rescinded if the Commissioner fails to:

(a) Hold a hearing:

(1) Not later than 30 calendar days after the petition is filed; or

- 1 (2) On a date agreed to by the Commissioner and the person; or
2 (b) Render a written decision within 45 days after the hearing is
3 concluded.

4 5. The decision of the Commissioner after a hearing is a final decision of
5 the Commissioner for the purposes of judicial review. [Emphasis added.]

6 NAC 645F.855 provides as follows:

7 1. If the Commissioner enters an order taking any disciplinary action
8 against a person, denying a person's application for a license, denying a
9 provider the right to teach approved courses, denying the approval of a
10 provider's course or denying the right of an instructor of a provider to
11 teach an approved course or approved courses, the Commissioner will
12 cause a written notice of the order to be served personally or sent by
13 certified mail or telegram to the person.

14 2. Unless a hearing has already been conducted concerning the matter,
15 the person, upon application, is entitled to a hearing. If the person does
16 not make such an application within 20 days after the date of the initial
17 order, the Commissioner will enter a final order concerning the matter.

18 3. A person may appeal a final order of the Commissioner taking any
19 disciplinary action against the person in accordance with the provisions of
20 chapter 233B of NRS that apply to a contested case. [Emphasis added.]

21 **If you wish to exercise your right to an opportunity for an administrative hearing, within**
22 **20 calendar days after receiving this Order, you must file a verified petition with the**
23 **Commissioner to request a hearing.**

24 **The verified petition requesting a hearing must be delivered by Certified First Class US**
25 **Mail or other form of mail delivery that provides a proof of delivery and receipt, or by hand-**
26 **delivery, to:**

**Division of Mortgage Lending
Attn. Susan Slack
7220 Bermuda Road, Suite A
Las Vegas, Nevada 89119**

**If you fail to timely file a verified petition to request a hearing, your right to a hearing to
contest this matter will be deemed waived and relinquished.**

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Department of Business and Industry, Division of Mortgage Lending, and that on, August 22, 2012, I deposited in the U.S. mail, postage prepaid via First Class Mail and Certified Return Receipt Requested, a true and correct copy of the foregoing, ORDER TO CEASE AND DESIST VIOLATING NRS 645F.010, ORDER TO MAKE RESTITUTION, ORDER IMPOSING AN ADMINISTRATIVE FINE AND ADMINISTRATIVE COSTS, AND NOTICE OF OPPORTUNITY FOR HEARING for, EZ DEBT SOLUTIONS, LLC and JOSE AVILA, addressed as follows:

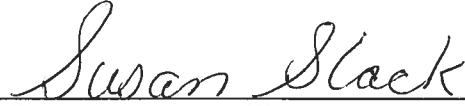
Jose Avila
2030 E. Flamingo Road #115
Las Vegas, NV 89119

Certified Receipt Number: 7009 2250 0001 8861 1187

Michael Harker, Esq.
5550 Painted Mirage Road, Ste. 255
Las Vegas, NV 89149

Certified Receipt Number: 7009 2250 0001 8861 1194

DATED this 21st day of August, 2012

By: 
Employee of the Division